IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05..11..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. No. 42971 of 2006
and
M.P. No. 1 of 2006

S.Balasubramanian ..Petitioner

Vs.

1. The Director General of Police
Chennai - 4

2. The Superintendent of Police
Tirunelveli District

3. The Deputy Inspector General of Police
Tirunelveli Range
Tirunelveli .. Respondents

Petition filed for issuance of writ of Certiorarified Mandamus calling for the records pertaining to the order of the first respondent in Rc. No. PR.II(1)/027215/2004 dated 31.7.2004 and the second respondent in D.O. 607/04 C. No. P3/OA.368/96 dated 19.8.2004 and Na. Ka. No. F1/BN/65/2004 dated 11.8.2006 and quash the same and direct the respondents to reinstate the petitioner in service with all consequential benefits including service, monetary benefits.

For Petitioner : Mr. M.S. Soundararajan

For Respondent : Mrs. Bhavani Subbarayan, AGP

ORDER

The petitioner challenges the order of the first respondent dated 31.7.2004 imposing the punishment of compulsory retirement, which was communicated by an order dated 19.8.2004, as well as the recovery order dated 11.8.2006.

2. I have heard the arguments of Mr. M.S. Soundararajan, learned counsel appearing for the petitioner and Mrs. Bhavani Subbarayan, learned Assistant Government Pleader representing the respondents and have perused the records.

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3. The petitioner was charge-sheeted under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules. The charge against the petitioner was that he had intimidated and intruded into the privacy of one Santhanamariammal, wife of Shanmugam, another Police Constable at 5.30 pm on 18.6.1983 and in furtherance of the object of intimidation and intrusion, visited the line hut 18 K Block between 9 and 10 pm clandestinely and skulked away. Subsequently, after conducting an enquiry, the petitioner was given punishment of reduction in time scale of pay for a period of two years with cumulative effect by an order dated 27.12.1984. The petitioner challenged the same by way of appeal dated 29.02.1985. But, however, the third respondent Deputy Inspector General of Police issued a suo motu revision order as to why the penalty should not be enhanced to that dismissal and accordingly, he was dismissed from service vide order dated 12.9.1985. The petitioner preferred a Review Petition before the Inspector General of Police and the penalty was set aside and the petitioner asked to show cause as to why he should not be dismissed from service by a notice dated 11.12.1996. Subsequently, after getting his explanation, he was dismissed from service on 04.3.1987.

4. As against the order of dismissal, the petitioner moved the Tamil Nadu Administrative Tribunal by filing an Original Application being O.A. No. 2754 of 1990 and the said O.A. was allowed by an order dated 06.3.1992 with a direction to the respondents to review the matter. The respondents' attempt to move the Supreme Court had also failed and the S.L.P. was dismissed on 09.5.1995. Thereafter, a show cause notice dated 06.11.1995 was given to the petitioner to submit his explanation. The petitioner, after submitting an explanation, also filed another Original Application before the Tribunal being O.A. No. 368 of 1996 challenging the show cause notice. The Tribunal, by an order dated 30.3.2004, directed the respondents to take a lenient view on the matter. Pursuant to the order of the Tribunal, the petitioner sent a representation dated 29.6.2004 to the first respondent. The first respondent rejected his representation but, however, imposed a penalty of compulsory retirement vide order dated 31.7.2004. The second respondent, while giving effect to the said order, directed that the compulsory retirement should take effect from the original date of punishment of dismissal, viz., 23.9.1985 and, therefore, he is deemed to have been retired with effect from 23.9.1985. In the light of the order dated 19.8.2004 treating the petitioner as having retired from 23.9.1985, by a further order dated 11.8.2006, the subsistence allowance paid to the petitioner from 23.9.1985 to 31.7.2004 was directed to be recovered from the petitioner. It is this order that is under challenge in this writ petition.

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5. For the nature of misconduct alleged against the petitioner, there is no case warranting giving a lesser punishment. Even the punishment of compulsory retirement was made only taking a leniency on the misconduct committed by the petitioner. The misconduct alleged against the petitioner was that he outraged the modesty of one woman, viz., Santhanamariammal, in the absence of her husband. There is a power under Rule 15 A of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules to revise any punishment without any time limit. Therefore, the challenge to the imposition of punishment made in the writ petition cannot be entertained and the writ petition is devoid of merits.

6. However, consequent to the imposition of compulsory retirement, which is invoked as a punishment, it is not open to the petitioner to pass the said order with retrospective effect, viz., with effect from 23.9.1985. In fact, originally the petitioner was imposed with the punishment of reduction in scale of pay. But when it is sought to be revised by invoking revisional powers, there is no impediment for the respondent to pass an order of compulsory retirement from service. In fact, the order dated 31.7.2004 passed by the first respondent merely imposes the punishment of compulsory retirement without any retrospective effect. But, it is the second respondent, who has modified the punishment to have retrospective effect from 23.9.1985. Even if such an order is held to be valid, there is no question of recovery of the Subsistence Allowance paid to the petitioner from 23.9.1985 till 31.7.2004. The Subsistence Allowance is paid in terms of Fundamental Rules. It is to keep the Government employee alive so that he can defend the proceedings effectively. Such an amount, being paid by way of Subsistence Allowance, cannot be recovered merely because the punishment of compulsory retirement was passed retrospectively. There is no rule which provides recovery of the Subsistence Allowance paid to a Government servant.

7. In view of the above, the impugned order dated 11.8.2006 ordering recovery of a sum of Rs.1,09,918/- from the petitioner is hereby set aside. The respondents are directed to forbear from recovering the said amount from the petitioner. If the amounts are already recovered from the terminal benefits payable to the petitioner, the respondents are directed to refund the same to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

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8. The writ petition stands disposed of in the above terms. However, there will be no order as to costs. Connected Miscellaneous Petition is closed.

Gri

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Director General of Police
Chennai - 4

2. The Superintendent of Police
Tirunelveli District

3. The Deputy Inspector General of Police
Tirunelveli Range
Tirunelveli

+ 1 cc to the Government Pleader, High Court, Madras SR No.66956

+ 1 cc to Mr. M. S. Soundararajan, Advocate SR No. 66609

LA(CO)
SR/7.12.2007

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